and say that paragraph (b) of section 39 includes a company which is not resident in the Colony. But every definition contained in section 2 must be read subject to that section's introductory and overriding words "unless the subject or context otherwise requires."

Section 38 provides that "there shall be levied and paid for each year of assessment upon the chargeable income of every person . . . . tax at the rates set forth in the Second Schedule." Four classes of "person" are excluded from the operation of section 38. They are (1) a company, (2) a person not resident in the Colony, (3) a trustee (not being the trustee of an incapacitated person), and (4) an executor. These four classes, having been excluded from the operation of section 38, are dealt with in section 39. A company is dealt with in paragraph (a); the remaining three are dealt with in paragraph (b).

In excluding these four classes from the operation of section 38 "a company" is referred to simpliciter and without qualification. Then follows the second class of "person" to be excluded, viz. "a person not resident in the Colony." Thus it seems to me that the context of section 38 requires that "a person not resident in the Colony" must be construed as not including a company, because a company has already been excluded from the operation of the section. But this view is strengthened in section 39(a) by the use of the words "every company."

It seems to me that I have three propositions before me. First, to construe the words "every company" in paragraph (a) of section 39 as not meaning what they say and to imply the insertion of some such words as "other than a company not resident in the Colony." Such a construction would be a violation of the language used. Second, to apply to the word "person" in paragraph (b) the full extent of the definition. By this method of construction I should be saying that the Legislature has made two contradictory provisions in two successive paragraphs, and I should be disregarding the introductory words of section 2. Third, to construe the word "person" in paragraph (b) as excluding a company, thus giving effect to the introductory words of section 2 and paying regard to what I think is the clear context both of section 38 and section 39. I have no doubt that the third is the proper construction and that neither of the other two affords a reasonable alternative. In my opinion the context is clear and unambiguous.

Before concluding I think it right to refer to two points in Dr. Withers Payne's argument. In interpreting section 39 he attached considerable importance to section 41. In that section the word "person" clearly includes a company; and the effect of that section is that in paying interest on a mortgage, debenture or loan to a person not known to be resident in the Colony, a company is required to deduct twenty per cent and render an account of it to the Comptroller, although upon the construction of section 39 which I hold to be correct all companies, whether resident or not, are liable to pay tax at the rate of thirty per cent. If this is an anomaly, it is equally an anomaly for the resident company as for the non-resident company; and there is no dispute that the resident company is liable to pay tax at the rate of thirty per cent of its chargeable income under the provisions of section 39(a). The answer would appear to lie in the first proviso to section 41, whereby the Comptroller, in the case of a company, woud give notice requiring that thirty per cent instead of twenty per cent should be deducted. His other point to which I wish to refer was that upon the construction of section 39 which I hold to be correct a "body of persons" and "a Hindu Joint Family" (which are contained in the definition "person" in section 2) would not be covered. In my opinion they are clearly covered by section 38. From the operation of that section four classes of juridical persons are excluded. From that it follows that three classes fall to be dealt with by that section — (1) an individual resident in the Colony; (2) a body of persons, not being a company, whether resident or not; and (3) a Hindu Joint Family.

The appeal is dismissed with costs.

Appeal dismissed.

LEONG CHEE YEONG (f) v. CHINA INSURANCE CO., LTD. AND LEONG CHEE YEONG (f) v. THE EASTERN UNITED ASSURANCE CORPN. LTD.

[Orig. Civ. Juris. (Thomson, J.) September 23, 1952]

[Ipoh — Civil Suit Nos. 69 and 85 of 1952]

Insurance — Personal Accident Insurance Policy — Change of profession or occupation without Notice to Insurance Company — Breach of Warranty.

The deceased who signed a proposal form for a Personal Accident Insurance Policy from the Chinese Insurance Co., Ltd. and was required to state his "Profession or occupation (if more than one please state all)" answered that he was a "merchant" and in reply to the question "Is there anything hazardous about your occupation or pursuits?" he answered "No."

The policy which was issued recited that the proposal "shall be deemed to be of a promissory nature and effect and the basis of this contract and which is deemed to be incorporated herein" and that payment under the policy shall be "subject to conditions and Memoranda, if any, contained herein or endorsed hereon." Clause 5 of the conditions of the Policy provided that "the Insured shall

give immediate notice to the company of any change of address, occupation, pursuits, etc."

The particulars given by the deceased in the proposal for a Personal Accident Insurance Policy issued by the Eastern United Assurance Corporation Ltd. were in similar terms. The policy recited that the "proposal and declaration are the basis of this contract" and that the insurance made "shall be subject to the conditions or Memoranda, if any, endorsed hereon" and "compliance with such conditions and Memoranda, and each of them shall be a condition precedent to the right of the insured to sue or recover there-under". Condition 5 of the policy, (which is set out **verbatim** in the judgment) provided for payment of proportionate benefit if the insured sustained injuries while engaged in an occupation within the Corporation's classifications but different from the one stated in the proposal.

On March 28, 1951, with a view to being enrolled as a member of the Auxiliary Police Force, the deceased completed the form "Personal record of member"; on April 20, 1951, he took the oath; on April 24, 1951, he was handed a Certificate of Appointment as an Honorary Inspector signed by the O.C.P.D. (who had no such authority) and on April 27, 1951, he was appointed by the Commissioner of Police as an Honorary Inspector of Auxiliary Police.

On the evening of April 27, 1951, the deceased went out on duty in his capacity as an Auxiliary Police Inspector, was injured by the explosion of a hand-grenade while inspecting A.Ps. on duty and died the same evening. The deceased had given no notice of his joining the Auxiliary Police Force to either of the companies.

In actions brought by the deceased's legal representative for recovery of sums under the 2 policies, —

Held: (1) considered in their ordinary sense the words occupation or pursuit were wide enough to include anything which a man does voluntarily and habitually even though no emolument or remuneration is received; (2) the insured's statement as to his occupation was a warranty and in assuming duty as an Auxiliary Police Inspector he was in breach of that promise and the policies thereupon became void; (3) a personal accident policy must be treated as analogous with any other form of non-marine insurance, and where it is a life that is insured the circumstances in which that life is lived bears the same relation to the risk as does the nature and user of a vehicle or premises in relation to the risks in other sorts of accident insurance, and that the risk of which the deceased died was not covered by the policies; (4) condition 5 of the China Insurance Co.'s Policy cannot be construed as a licence to the insured to make any change in his occupation and so alter the nature of the risk covered by the policy by giving notice; and (5) the occupation of a Police Inspector is not one within the classification of occupations in the Eastern United Policy.

Cases referred to :—

(1) *Denison v. Modigliani* 5 T.R. 580.

(2) *Law Guarantee Trust & Accident Society v. Munich Re Insurance Co.* (1912) 1 Ch. 138.

(3) *Dawsons Ltd. v. Bonnin* (1922) A.C. 413.

(4) *Provincial Ins. Co. Ltd. v. Morgan* (1933) A.C. 240.

(5) *Thomson v. Weems* (1884), 9 App. Cas. 671.

(6) *Farr v. Motor Traders Mutual Ins. Society Ltd.* (1920) 3 K.B. 669.

(7) *Roberts v. Anglo-Saxon Ins. Assn.* (1927) 96 L.J.K.B. 590.

(8) *Sillem v. Thornton* 3 El. & Bl. 868.

(9) *Shaw v. Robberds* 6 Ad. & El. 75.

(10) *Yahaya bin Mat v. The Sitiawan Transport Co. Ltd.* (1951) M.L.J. 59.

(11) *Luckin v. Hamlyn* 21 L.T. 366.

(12) *Currie v. Inland Revenue Commissioners* (1921) 2 K.B. 332.

(13) *Carr v. Inland Revenue Commissioners* (1944) 2 All E.R. 163.

(14) *Commissioners of Inland Revenue v. Maxse* (1919) 1 K.B. 647.

ACTION.

B. K. Das for the plaintiff in each case.

H. T. Ong for the defendants in each case.

Cur. Adv. Vult.

Thomson, J. : — These are two actions by the executrix of the Will of Foo Eng Lin who died at Ipoh on 27th April, 1951, against two insurance companies with which the deceased was insured. The questions of construction which arise in the two cases are largely the same, the facts (which except as to one point are contained in an agreed statement) are the same, similar questions of law arise in both cases and by consent of all the parties both cases were tried together.

Foo Eng Lin (to whom I shall henceforth refer as the insured) was a merchant carrying on business and residing in Ipoh. On 4th August, 1948, he made a written application of the sort commonly known as a proposal to the China Insurance Co., Ltd. for "personal accident insurance" and a few days later this Company issued to him a Personal Accident Policy (to which I shall henceforth refer as the China Policy) whereby in consideration of a premium of $75 various benefits were assured to him including a sum of $7,500 in the event of death. This policy was renewed from time to time and was last renewed for one year from 9th August, 1950. On 5th August, 1948, the insured made a similar proposal in writing to the Eastern United Assurance Corporation Ltd., and a few days later this Corporation also issued him with a policy (to which I shall henceforth refer as the Eastern United Policy) the premium payable under which was also $75 but under which the amount payable in the event of death was $5,000. This policy also was renewed from time to time and was last renewed for one year from 5th August, 1950. The terms of these two policies will at a later stage call for detailed and separate consideration.

To proceed with the narrative, some time in March or April, 1951, (I do not think the exact dates are very material) the insured took steps to join the Auxiliary Police Force. He completed and signed a form entitled "Personal Record of Member" the title of which is explanatory of its nature. This is dated 28th March, 1951, although I think it is common ground that no steps in connection with it were taken by the Police authorities until some time later. On 20th April, 1951, he took the oath as a Special Constable. On 24th April, he was handed a "Certificate of Appointment" as an Honorary Inspector and on 27th April, 1951, a letter was addressed to him by the Commissioner of Police, which in fact he never received, appointing him to be an Honorary Inspector in the Auxiliary Police with powers of command. On the evening of 27th April, 1951, although he had not yet received the letter from the Commissioner of Police, the insured went on duty in uniform and armed as an Honorary Inspector of the Auxiliary Police. While, in the course of this duty, he was engaged in checking police on duty a hand grenade was thrown in the street where he was inflicting on him injuries as a result of which he died and also inflicting injuries, apparently non-fatal, on a Police Sergeant, a Police Constable and four members of the public.

In due course the present plaintiff who is the widow of the insured obtained probate of his Will and as executrix claimed against both the defendant Companies under the policies issued by them. The Companies denied liability and, both of them having waived the condition in the policies making arbitration a condition precedent to action, the present actions were commenced.

I will now proceed to consider the terms of the two policies.

First, I take the China Policy. The proposal signed by the insured is on a printed form supplied by the insurers and completed by him. It is headed "Application for Personal Accident Insurance". It sets out the applicant's name and other personal particulars. Then come the words "Profession or Occupation (if more than one please state all)" opposite which is written the word "Merchant". There follow a number of other personal particulars and then come a series of eleven questions to be answered by the applicant. The first of these is "Is there anything hazardous about your occupation or pursuits?" and to that the answer is "No". The form concludes with the following words: "I hereby apply to the China Insurance Company, Limited, for insurance as set out in the Company's Personal Accident Insurance Policy, and I hereby warrant the above particulars are true and I agree that this Application shall form the basis of the contract between me and the China Insurance Company, Limited."

The policy which was subsequently issued commences by reciting that the insured had made to the Company "a written Application which the Insured has declared to be true and correct and agreed shall be deemed to be of a promissory nature and effect and the basis of this Contract and which is deemed to be incorporated herein" and that the premium had been paid "as consideration for the Indemnity hereinafter contained." It then goes on to provide that certain sums shall be payable if during the period of insurance "the Insured shall sustain any bodily injury caused directly and solely by violent, accidental, external and visible means" and that such payment shall be "subject to the Conditions and Memoranda, if any, contained herein or endorsed hereon". The Policy then sets out certain personal particulars as to the deceased in which his occupation, as in the proposal, is described as "Merchant." It then sets out a number of provisions as to the amount payable in the event of the risk insured against taking place none of which are material, and then after the execution on behalf of the Company follow a number of what are called "Conditions" only one of which in my view can be really material to the present proceedings. That is, No. 5 which reads as follows:—

"5. The Insured shall give immediate notice to the Company of any change of address, occupation, pursuits or any injury, disease, physical defect or infirmity by which the Insured has become affected and also notice of any other Insurance (excepting Coupon or in connection with a Motor Insurance Policy) effected against or incapacity."

The policy bears the following endorsement the date of which is not clear but which would appear to be contemporaneous with the policy itself.

"This policy extends to cover Death and/or Disablement caused by Murder, Assault or Attempt thereat but excluding provoked assault."

The policy expired on 9th August, 1949, but was apparently renewed for another year and some time prior to the expiry of the renewed policy on 9th August, 1950, the Company addressed to the deceased a renewal notice reminding him that it was about to expire and concluding with the following note:—

"N.B. You are requested to notify the Company if there is any change in the nature of the risk, or if by reason of appreciation or depreciation in the value of the property insured, the existing amount of cover calls for revision."

On 7th August, 1950, the deceased addressed the Company asking them to renew the policy and enclosing his cheque for the premium.

It was admitted that the deceased had never at any time informed the Company of his intention to join the Auxiliary Police or of the fact that he had assumed duty as an Officer of that force.

For the plaintiff it was urged by Mr. B. K. Das with much skill and persuasiveness that the insured had met his death as a result of a risk covered by the policy and that if the case fell within the exceptions contained in the policy the onus of proving so was, in accordance with well settled principles of law, upon the Company. He went on to argue that in becoming an Auxiliary Police Inspector the insured had not changed his occupation, that even if there was a change of occupation the effective date of it was 27th April, the date of death, and so the Company could not avoid the policy for want of notice because the insured had not had a reasonable opportunity of giving notice of the change and that in law there was no warranty by the insured that he would remain exclusively in the occupation set out in the proposal. It was also argued, though frankly I do not think this has much bearing on the matter, that the conditions of the policy were ambiguous and so should be construed in favour of the insured and that they were also uncertain and therefore not binding on him.

The defence, in effect, was that the Company was not liable because the true effect of the contract was that while the insured was acting as a Police Officer he was not covered by the policy. The point was put with great simplicity by Mr. H. T. Ong: "We undertook to insure a Merchant, not a Merchant who was also a Police Officer" and in doing so he was no doubt adapting to the present case the words of Grose, J., in the case of *Denison v. Modigliani*[1] :—

> "It is material to consider what was intended to be insured. The risk of insuring a mere trading ship, is very different from that of one carrying letters of marque."

This view of the case was put in two other alternative ways by saying that when the insured assumed duty as a Police Officer the whole basis of the contract between him and the Company was destroyed or that there was implied by law in the contract a warranty (in the sense in which that expression is commonly used in insurance law) that he would not voluntarily do anything to increase the risk insured against without informing the Company. It was also argued that in failing to notify the Company that he had become a Police Officer the insured had committed a breach of No. 5 of the Conditions annexed to the policy, the terms of which have been quoted, and that that condition was one going to the root of the contract so that breach was sufficient to avoid it.

Before proceeding to examine the law applicable to the case, I wish to make two observations of a general nature. The first is that in examining any claim under an insurance policy it is necessary to ascertain what exactly is the risk insured against. It is a general principle applicable in all cases of insurance that the obligation of the insurer is confined to the particular risk insured, and that if the risk in respect of which a claim is made against the insurer differs from the risk he has insured, he is not liable to make good that claim" — per Warrington, J., [at p. 153] in *Law Guarantee Trust & Accident Society v. Munich Re-Insurance Company*[2].

The second observation I would make is that a personal accident policy of the sort with which I am here concerned must be treated as analogous with any other form of non-marine accidence insurance. What is insured against is not, as in the case of a life policy, the mortality which is common to us all and only varies in the time of its occurrence but the result of an accident which may or may not ever occur, and it seems to me that it makes little difference in principle whether these results be the loss of life caused by external means or loss of a vehicle by collision or the loss of a building by fire. In the eyes of the law man is a spirit and I can see no difference in principle between a contract whereby he insures his person against murder and one whereby he insures his motor car against collision. Nor, it might be added, does it seem to be relevant in this connection that what the contract provides for in the event of the risk occurring is not a bare indemnity but a payment of fixed amount.

To my mind, the law is to be ascertained by following two lines of authority which though in no way in conflict are yet clearly distinguishable.

In the first place, there is the case of *Dawsons Ltd. v. Bonnin*[3], which, in the words of Lord Buckmaster in the case of *Provincial Insurance Co. Ltd. v. Morgan*[4] [at p. 247], "except so far as it shows that a contract as to future conduct can equally be made the basis of a contract with a statement of existing fact" did no more than apply "well-established principles to a special state of facts".

In the *Dawsons'* case, a firm of contractors had insured a motor lorry against damage by fire and third party risks. The policy recited that the "proposal shall be the basis of this contract and be held as incorporated therein". In reply to a question in the proposal form, "State full address at which the vehicle will usually be garaged" an answer was given by inadvertence which was never at any time accurate. In the event, it was held by the House of Lords (by a majority) that the recital in the policy that the proposal should be the basis of the contract made the truth of the statement contained in the proposal a condition of the liability of the insurers, that the effect of this recital was not cut down by the special conditions of the policy and that the claim failed.

Viscount Haldane, after discussing the facts of the case came to the conclusion that the misstatement in the proposal was not material, "But", said His Lordship :—

"That does not dispose of the case. For if the respondents can show that they contracted to get an accurate answer to this question, and to make the validity of the policy conditional on that answer being accurate whether the answer was of material importance or not, the fulfilment of this contract is a condition of the appellants being able to recover."

He then discussed certain aspects of the development of the doctrine of warranty in the law of England which in his opinion as applied to stipulations in a contract of assurance was also the law of Scotland, and went on to say :—

"The Courts of common law showed great readiness to construe a representation sufficiently expressed to be the foundation for the acceptance of a proposal made by a would-be insured to an insurer as a condition which, if accepted, had to be observed independently of any question of materiality."

He then referred to the judgment of Lord Blackburn in *Thomson v. Weems*[5] and went on :—

"Lord Blackburn lays stress . . . . on the expression 'basis'. In **Attorney-General** v. **Rex**, James and Mellish L.JJ., two great masters of accuracy in legal phraseology, employ the same term to denote what they considered descriptive of what was foundational or essential in the transaction before them . . . . I do not think that it matters whether the representation which is made 'basic' is as to a state of present fact or to something to be carried out in the future, such as garaging at a particular place. What is important in the latter alternative is that the insured cannot recover unless he can show that he has performed his part, for his performance by the other party."

Applying these principles of construction and observing that hard cases must not be allowed to make bad law, His Lordship concluded :—

"Now the proposal, in other words the answers to the questions specifically put in it, are made basis to the contract . . . It was a specific insurance, based on a statement which is made foundational if the parties have chosen, however carelessly, to stipulate that it should be so. Both on principle and in the light of authorities such as those I have already cited, it appears to me that when answers, including that in question, are declared to be the basis of the contract this can only mean that their truth is made a condition exact fulfilment of which is rendered by stipulation foundational to its enforceability."

Viscount Finlay dissented on the ground that the clause in the policy that the proposal should be the basis of the contract was inadequate to support the conclusion which the respondents desired to draw from it. He based that conclusion, however, on his opinion that the misstatement which had been made in the proposal was not material to the risk and added "if the statement were material to the risk it might be another matter altogether".

Viscount Cave was in agreement with Viscount Haldane and observed "upon the whole, it appears to me, both on principle and on authority, that the meaning and effect of the 'basis' clause, taken by itself, is that any untrue statement in the proposal, or any breach of its promissory clauses, shall avoid the policy"

Lord Dunedin agreed with Viscounts Haldane and Cave and said :—

"I think that 'basis' cannot be taken as merely pleonastic and exegetical of the following words, 'and incorporated therewith.' It must mean that the parties held that these statements are fundamental — i.e., go to the root of the contract — and that consequently if the statements are untrue the contract is not binding."

Lord Wrenbury dissented, but on the ground that only material misstatements would avoid the policy and that the misstatement in question was not material.

The effect of the *Dawsons'* case was thus stated by Lord Wright in the *Provincial Insurance Co. Ltd. v. Morgan*[4] [at page 253] :—

"It was decided by this House in **Dawsons Ltd.** v. **Bonnin** that words in a policy analogous to those in the present policy, stating that 'the proposal shall be the basis of the contract and be held as incorporated therein,' are words apt to convert answers to questions into conditions of the policy . . . . It was held by this House that the assured could not recover because the assured had broken the condition in the policy as to the usual place where the car was garaged. It was held that the incorporation of the answer into the contract as its basis constituted it a condition; it was not relevant to consider whether the matter of question and answer was or was not material. That decision involved an extension of the earlier judgment of this House, in **Thomson** v. **Weems**, where the policy expressly provided that 'if anything averred in the declaration . . . shall be untrue, this policy shall be void, and all moneys received by the said company in respect thereof shall belong to the said company for their own benefit.' The later case held that the same effect resulted from the word 'basis'."

His Lordship, however, continued :—

"On the other hand it is clear law that in insurance a warranty or condition (because these words are used as equivalent in insurance law, which in that respect differs in its use of the terms from the law of sale of goods), though it must be strictly complied with, must be strictly though reasonably construed. In the present case the appellants do not allege that there was any concealment or misrepresentation nor do they complain of any of the other answers. The relevant answer, does, I think, refer to the future and is, in my opinion, of a promissory nature and is apt to create a warranty or condition."

These observations by Lord Wright lead me to consider the line of authority running through the cases *Farr v. Motor Traders Mutual Insurance Society Ltd.*[6], *Roberts v. Anglo-Saxon Insurance Association*[7] and *Provincial Insurance Co. Ltd. v. Morgan*[4]. *Supra.*

In *Farr's* case the action was to recover a sum of money on a policy of insurance on a motor taxi-cab. The policy contained a clause agreeing that the contents of the proposal should be the basis of the contract and be considered as incorporated therein, and in the proposal was a statement that the cab covered was only to be driven in one shift per 24 hours. Rowlatt, J., held that the effect of that statement was that the defendants were only to be liable when the cab was driven in one shift per 24 hours and not to

be liable when the cab was driven in more than one shift, that it was merely a limitation of the risk, and that the fact that the cab had been driven in two shifts on an occasion prior to the accident which had given rise to the claim did not render the policy void. On appeal, the Court of Appeal held that this construction of the contract was the correct one and Bankes, L.J., said that the position was "very clearly and accurately put" in the following passage from *MacGillivray* on *Insurance Law* (3rd Ed. at p. 608) dealing with representations and warranties in fire policies :—

"It is a little doubtful how much is to be inferred from the mere description in a fire or burglary policy of the premises or goods insured. It may be put in three ways: (i) that the description is a representation of the state of the premises or goods; (ii) that the description is a definition of risk; (iii) that the description is a warranty that the premises or goods shall correspond thereto. But if the description is embodied in the policy either actually or by reference, it has at least the force of a limitation of the risk to be run. In this view the premises or goods will be covered by the policy so long, but only so long, as they comply with the description, and if the description is considered merely as a limitation of the risk and not a warranty the insurer will not be wholly discharged, but the policy will merely cease to attach until the property once more corresponds to the description."

In *Roberts'* case the action was on a policy of insurance on a motor car which incorporated and was based on a proposal which contained a declaration by the insured which warranted that the motor car was to be used only for commercial travelling. During the currency of the policy the motor car was being used to carry passengers when it caught fire and was destroyed. It was held that the statement in the proposal form that the motor car was only to be used for commercial travelling was a statement descriptive of the risk to be covered, that carrying passengers was not within the description, and that the insurers were not liable for the accident while the motor car was being used to carry passengers. Bankes, L.J., said that in his opinion the true construction of the contract was a construction similar to the one which was put in similar language in *Farr's* case which he described as follows :—

"In this class of policy when persons insert clauses whether described as warranties or whether described as part of the description of the vehicle, indicating that the vehicle is to be used in some restricted way, my opinion in that case, and in this case and in similar cases, is and would be that the parties had used that language as words descriptive of the risk, and that, as a result, when the vehicle is not being used in accordance with the description it is not covered by the policy".

In *Morgan's* case, the policy of insurance also contained a basis clause and in the proposal the insured had stated that delivery of coal to be the purpose for which the vehicle would be used. The vehicle was involved in an accident while engaged in delivering coal and in spite of the admitted fact that on previous occasions it had been used for other purposes the insured was held entitled to recover. The actual question in issue was whether the policy had been avoided prior to the accident by the use of the vehicle for purposes other than delivering coal but Lord Buckmaster referred to *Farr's* case and *Robert's* case and pointed out that in each of these cases it was held that a description as to the use to which the vehicle was to be put was descriptive of the character of the risk, and Lord Wright said that he must not be taken to dissent from the opinion of Scrutton, L.J., in the Court of Appeal that the question and answer as to the use to which the vehicle was to be put were to be construed as describing or defining the risk covered by the policy.

It may be that a third line (or perhaps I should say point) of authority is to be found in the old case of *Sillem v. Thornton*[8]. That was a case under a fire policy which did not contain a basis clause. The description of the premises insured was accurate when supplied to the insurers prior to the issue of the policy but by reason of alterations it became inaccurate at the time when the fire occurred which destroyed them. In giving judgment for the underwriters Lord Campbell, C.J., observed :—

"We are further of opinion that the description in the policy amounts to a warranty that the assured would not, during the time specified in the policy, voluntarily do any thing to make the condition of the building vary from this description so as thereby to increase the risk or liability of the underwriter."

That case, however, was decided largely on its own particular facts and has attracted little attention in more modern discussions of the subject and so, although it has never been over-ruled, cannot be regarded as an authority of very great value.

The only other case which I need consider is the case of *Shaw v. Robberds*[9]. In that case premises described in the policy as a kiln for drying corn were on a single isolated occasion, and not for reward, used for what the jury held to be the more hazardous purpose of drying bark. The policy contained conditions that if there were any misrepresentation in the description of the premises or if any alteration was made in the business carried on in the premises the policy should be void. It was held that the condition relating to the description of the premises only related to the description at the time of insuring and that the single gratuitous act of drying bark without notice to the insurers did not constitute a breach of the condition as to notice. As regards the description condition the Court clearly treated it as a matter of construction, and as regards the notice condition Lord Denman, C.J., stated his opinion as follows :—

"The sixth condition points at an alteration of business, at something permanent and habitual; and, if the plaintiff had either dropped his business of corn-drying, and taken up that of bark-drying, or added the latter to the former, no doubt the case could have been

within that condition. Perhaps if he had made any charge for drying this bark, it might have been a question for the jury whether he had done so as a matter of business, and whether he had not thereby (although it was the first instance of bark-drying) made an alteration in his business, within the meaning of that condition. But, according to the evidence,we are clearly of opinion that no such question arose for the consideration of the jury; and that this single act of kindness was no breach of the sixth condition."

Referring to this case in *Sillem v. Thornton*[8] Lord Campbell, C.J., observed :—

"The Court there intimates an opinion that there was no implied warranty that nothing besides corn should ever be dried in the kiln, but gave no countenance to the doctrine that another and more dangerous trade could be carried on in the kiln without vitiating the policy."

For the purposes of the present case, I would not state the law more closely than this. Where there is a proposal which in terms has been incorporated in the policy and which has been stated to be its basis then the Courts have regarded the statements contained in the proposal in one of two ways. Either they have treated these statements as promises that a certain state of things shall continue or a certain course of conduct shall be continued during the whole period covered by the policy so that if the particular promise is not kept the policy is invalidated or they have regarded these promises as merely descriptive of the risk so that if the accident happens while the promised state of things subsists there is a valid claim, but if the accident happens while the state of things has ceased or been interrupted there is no valid claim.

Here the insured had warranted that the particulars contained in his proposal were true and had agreed that his proposal should form the basis of the contract between himself and the Company. In the policy it was stated that the insured had agreed that his proposal "shall be deemed to be of a promissory nature and effect and the basis of this contract" and that the proposal was deemed to be incorporated in the policy. In the proposal he had stated that his "Profession or Occupation (if more than one please state all)" was that of a Merchant and that there was nothing hazardous about his occupation or pursuits. As I have said, no distinction can be drawn between personal accident insurance and any other form of non-marine accident insurance. In the case of personal accident insurance where it is a life that is insured the circumstances in which that life lived bear the same relation to the risk as does the nature and user of a vehicle or premises in relation to the risk in any other sort of accident insurance. On the law as I have stated it, it is impossible to regard the insured's statement as to his occupation or occupations and pursuits otherwise than as a promise, and if the accident whereby he died occurred while he was in breach of that promise it seems to me immaterial whether it be regarded as a promise that he would continue a certain course of conduct throughout the duration of the policy on merely as a description of the risk. The promise was that he was a Merchant and that there was nothing hazardous about his occupation or pursuits, and it seems to me impossible to resist the conclusion that when he assumed duty as an Auxiliary Police Inspector that promise was broken. In the first place, he had commenced to do something that was definitely hazardous. The duties of a Police Officer are to maintain law and order, to prevent the commision of crime and to apprehend offenders and, as I observed in the case of *Yahaya bin Mat v. The Sitiawan Transport Company Ltd.*[10] :—

"It is a matter of common knowledge that this unhappy country is suffering from the activities of bands of ferocious and, by our standards, lawless men armed with modern weapons who in pursuit of certain political aims habitually practice murder, arson, theft and other offences against person and property."

Nor, I think, can there be any doubt that exercising the functions of a Police Officer had become an occupation or pursuit of the insured. The contrary view was urged by Mr. Das, who based his argument on the point on the case of *Luckin v. Hamlyn*[11], where it was said by Kelly, C.B., that the word "occupation" in the Bill of Sale Act, 1844, "means the trade or calling by which the maker of the bill of sale ordinarily seeks to get his livelihood", and where Martin, B. said that the word "occupation" is used to mean "the business in which a man is usually engaged to the knowledge of his neighbours." These definitions, however, must be confined to the particular purposes of the Act in relation to which they were framed and indeed this is clear from the observation of Martin, B. :—

"The intention is, that such a description should be given that if inquiry be made in the place where the person resides, he may be easily identified."

In the absence of authority, the words here must be considered in their ordinary sense and considered in that sense they are wide enough to include anything which a man does voluntarily and habitually. If a bricklayer on an isolated occasion jumps from an aeroplane with a parachute or jumps into the river to save life, then the laying of bricks is one of his occupations or pursuits but parachute-jumping or swimming is neither. If, however, he joins a club devoted to the practice of parachute-jumping or swimming and habitually indulges in the activities which such a club exists to foster, then these activities are to be numbered among his pursuits, if not among his occupations, although he is still and contemporaneously carrying on the laying of bricks. And, I would add it has no bearing on the case that he may still be known to his neighbours and his creditors as Smith the bricklayer

and not Smith the parachute-jumper. In the present case, the issue is to some extent obscured by the tragic fact that the accident occurred within a few hours (it may have been within a few minutes) of the very first moment on which the insured assumed duty as a Police Officer. There can, however, be no question that he had commenced what he intended to be and what but for the accident would have been a continuing course of conduct. It was not a case of a citizen going to the assistance of the police in a suddenly arising emergency and being hurriedly vested with authority as a Police Officer. Before he had ever gone on duty and, whenever it was, it was at the lowest some days previously, he had supplied the police authority with full particulars of himself and had taken a solemn oath that he would faithfully serve in the Auxiliary Police Force in the State of Perak. In the circumstances, I am regretfully compelled to the conclusion that there was a breach of a promise contained in the contract between himself and the Company, and whether that promise be regarded as one that the facts set out in his proposal would continue to be true or whether it be regarded as merely defining the risk insured against, the claim against the Company must fail.

I would add, in case it be thought I have overlooked the point, that the question of causation does not arise. In none of the cases I have considered was it even discussed. In the *Dawsons'* case it was held in terms that the misrepresentation was immaterial and in the *Roberts'* case, where the motor car was held to be insured only while being used for commercial travelling and where the accident occurred when it was being used for carrying passengers, there was not the slightest suggestion of any causal connection between the nature of the user and the accident. When the vehicle was used for a purpose outside the scope of the policy the policy ceased to apply.

In all these cases the Court based itself on the question of the risk which was insured against and the risk which was subsisting at the time of the accident and not on the question of causation. The distinction is clearly illustrated by the old case of *Denison v. Modigliani*[1] to which I have already referred. In that case a ship was insured on a trading voyage and without the consent of the underwriters was carrying a letter of marque. The letter of marque was not acted upon and the ship did not in fact deviate from her voyage for the purpose of cruising in search of prizes but Lord Kenion, C.J., observed :—

"It is enough for me to say that the captain had a strong temptation to deviate; and that this is such an essential alteration of circumstances from the condition of the vessel at the time of the insurance, as ought to discharge the underwriters, unless it were done with their consent."

Before departing from the China Policy, I feel I should say a few words regarding No. 5 of the conditions contained in the policy, that is the condition relating to giving notice to the Company of any change of occupation the full terms of which I have already quoted. In view of the results at which I have arrived and which I have stated, it is not necessary for me to decide whether that is a condition failure to comply with which avoids the policy or whether it is merely a warranty, and here I use the word warranty in its general meaning and not in the specialised meaning it has acquired in connection with insurance law. On neither showing, however, can its existence avail the insured in any way in the circumstances of the present case. It is true that had he given notice of his change of occupation and had the Company then failed to cancel the policy, as under an earlier condition they were entitled to do, the question of waiver would h. arisen. It is admitted, however, that no notice wa given and as a question of construction it seems to me impossible to argue on the wording of the condition itself and of the policy as a whole that any licence can be implied to the insured to make any change in his occupation and so alter the nature of the risk covered by the policy provided notice was given. Such a result could only arise as I have said by reason of waiver and it seems to me a strange doctrine to say that any condition or warranty in a contract can be broken with impunity because it is to be presumed in every case there will be a waiver by the other side.

I now turn to a consideration of the Eastern United Policy.

Except in one respect the proposal on which that policy was based and the policy itself are in all material respects the same as in the case of the China Policy and the law as I have stated it is therefore applicable to it.

The only point of substance on which the two policies differ is that the Eastern United one contains the following condition :—

"5. The Insured shall forthwith give notice to the Corporation of:—

(A) Any change in his name, residence or occupation. If the Insured shall during any year of insurance engage in an occupation scheduled in the Corporation's classification of occupations as being more hazardous than the occupation which the premium for the Insurance is based and shall have failed to give notice of such change and obtain the Corporation's consent thereto, the compensation payable under this Policy shall be the sum which the premium paid would insure if rated according to such more hazardous occupation, but if he shall renew this Insurance after changing his occupation without first notifying the Corporation of such change, or if he shall engage in an occupation not specified in such classification without the consent of the Corporation, signified by endorsement hereon, then, and in either of such cases this Policy shall be void."

That condition is by no means skilfully drafted and in certain circumstances its interpretation might

well give rise to difficulty. To this extent, however, its meaning is clear. If the insured engages in an occupation other than that specified in the proposal then in the event of his sustaining accidental injury he is entitled to some benefit if the occupation in which he so engages is within the Corporation's "Classification of Occupations". If, however, he engages in an occupation not specified in that "Classification of Occupations" without the consent of the Corporation signified by endorsement on the policy then the policy is void.

It is the portion of this condition relating to a change of occupation within the classification of occupations that is by no means free from difficulty, but before approaching that question it is necessary to determine whether the occupation of an Inspector of Police is specified in that classification at all. It is abundantly clear from what I have said in connection with the China Policy that the insured did engage in that occupation. There is no question that he did so without the consent of the Corporation and if that occupation is not specified in the classification then apart from all the other relevant considerations, the effect of the condition is that the policy became void on his so engaging.

As far as possible a contract is to be considered within its own four walls and here there can be no doubt that the classification of occupations is that set out at the end of the proposal form the English version of which reads as follows :—

CLASSIFICATION OF OCCUPATIONS.

Class I. Professional and Mercantile classes generally.

Class II. Master Tradesmen, shop proprietors and assistants, cashiers, collectors, store-keepers, (Superintending).

Class III. Engineers, mechanics, tradesmen, labourers, etc.

As in the case of the rest of the proposal, but not of any part of the policy itself, there is also a Chinese version and on this portion of the proposal I am inclined to think that the English version is a translation from the Chinese and not *vice versa* but on such advice as I have been able to obtain as to the meaning of the Chinese characters no assistance is to be derived from a consideration of the Chinese version and I have therefore disregarded it.

Before proceeding to a detailed exegesis of this classification, I would observe that it cannot be regarded as being, or as intended to be, an exhaustive list of all the occupations in which a human being can employ himself. If that is not clear enough from its own wording it is put beyond doubt by the wording of Condition 5 which clearly shows that the parties had in mind that there are occupations which do not fall within its scope.

I would then observe that the classification can best be approached in the light of the following passages. In both cases the Court was concerned with the question of what is a profession for the purposes of the Finance Acts but the passages quoted are of general application.

The first passage I would quote is from the judgment of Lord Sterndale, M.R., in the case of *Currie v. Inland Revenue Commissioners*[12] [at p. 336] and reads as follows :—

> "There may be circumstances in which nobody could arrive at any other conclusion than that what the man was doing was carrying on a profession; and therefore, looking at the matter from the point of view of a judge directing a jury, the judge would be bound to direct them that on the facts they could only find that he was carrying on a profession. That reduces it to a question of law. On the other hand, there may be facts on which the direction would have to be given the other way. But between those two extremes there is a very large tract of country in which the matter becomes a question of degree; and where that is the case the question is undoubtedly, in my opinion, one of fact."

That, observed Scott, L.J., in the case of *Carr v. Inland Revenue Commissioners*[13] [at p. 66] "is a well-known passage and, in my view, could hardly be improved upon." The second quotation I would make is from the judgment of du Parcq, L.J., in *Carr's* case :—

> "Ultimately one has to answer this question: Would the ordinary man, the ordinary reasonable man — the man, if you like to refer to an old friend, on the Clapham omnibus — say now, in the time in which we live, of any particular occupation, that is properly described as a profession? I do not believe one can escape from that very practical way of putting the question."

Approaching the classification of occupations set out in the proposal in the light of these passages, I have come to the following conclusions.

In Class I, I do not think the word "classes" occurring in the expression "Professional and Mercantile classes" can be held to refer to social classes as might be the case if the words were considered in isolation. The whole portion of the proposal under consideration is headed "Classification of Occupations" and the three columns under that heading are headed "Class I", and so forth. That heading and these sub-headings must govern everything included under them and so the word "classes" can only mean classes of occupations. The occupation of a Police Inspector certainly does not fall within the mercantile class of occupations nor I think can it be described as falling within the professional class of occupations. The conception of what is a profession has, no doubt, enormously widened within the last two or three generations. Courtesy and common usage compel us to regard as professions a large number of occupations which our grandfather would have refused to recognise as such. Nevertheless I do not think that any ordinary reasonable man would say that the occupation of a Police Inspector is a profession. To my mind it is as true to-day as when it was said over thirty years ago by Scrutton, L.J., in

the case of *Commissioners of Inland Revenue v. Maxse*[14] [at p. 657]:—

"A 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator."

and it is no reflection on a useful and respectable body of men to say that such a description could not with any respect for accuracy in the use of language be applied to the work of a Police Inspector.

As regards Class II, a Police Inspector is clearly not a shop proprietor, or assistant, or a cashier or a collector, or a store-keeper. Nor could his occupation be properly described as that of a master tradesman, whether a tradesman be regarded as one engaged in retail trade or, in what may be a distinctive Scottish usage, as a skilled workman. I think, too, it is clear from the fact that the word "Superintending" occurs in brackets that it is used adjectivially and as qualifying the preceding substantives and not in itself substantively as adding to them.

Turning to Class III, it is clear that the occupation of a Police Inspector cannot be said to be that of an engineer, a mechanic, a tradesman, or a labourer, and I do not think the plaintiff is in any way helped by a consideration of the general word "etc." It would be difficult to imagine a clearer example of a general word following on a series of particular words and so to be read *ejusdem generis* with them. The word "tradesmen" here is clearly used in the sense of a skilled workman. The one thing that is common to the conceptions of an engineer, mechanic, any other skilled workman and a labourer is the idea of the application of human physical force, whether with or without skill, to material objects so as to effect some sort of transmogrification in them and in the present context it would be impossible to include any occupation not involving that idea in the general expression *etcetera*.

I am thus compelled to say that the occupation of a Police Inspector is not one specified in the Corporation's classification of occupations, and I do not think there can be any doubt that the insured "engaged" in that occupation without the Corporation's consent. It is admitted that there is no question of consent. As regards the question of whether he "engaged" in that occupation, the wording of the proposal clearly envisages that an insured person might have more than one occupation. Moreover, the clear words of Condition 5 do not differentiate in any way between the case where an insured person engages in a new occupation in addition to his previous one and the case where the new occupation is in substitution for the previous one, and, apart from the ordinary usage of the English language, I am fortified in thinking that no such differentiation was intended by the reference in the first sentence of the condition to "any" change "in" (not "of") occupation.

It follows, then, that apart from and in addition to his not being covered by the policy at the time of the accident which caused his death for the reasons I have set out at length in connection with the China Policy, the Eastern United Policy was void as a result of the operation of this condition.

In both cases, therefore, there will be judgment for the defendant Company with costs.

Before departing from these cases, I think I should in common fairness say a word regarding what I may call the moral aspect. I need hardly say that I have felt the greatest possible human sympathy with the plaintiff and that it is with very great regret that I have found myself compelled to give judgment against her. On the other hand, apart from the considerations that this is a court of law and not a court of morals, that contracts are contracts, and that hard cases make bad law, it is to be remembered that insurance companies are in a somewhat distinctive position. No doubt they are in business primarily for their own profit and not for the benefit of the public. Nevertheless, it is of the essence of their business that they should incur potential obligations to a large number of members of the public which it is essential in the public interest they should be able to observe. No doubt the premiums they charge are calculated in the light of the risks they incur so as to maintain a necessary measure of financial stability and the necessity for maintaining such financial stability in the public interest is a considerable justification for resisting claims which are considered to go beyond the risks for which premia have been charged on the basis of which the company's calculations are based.

Judgment for the defendants.

J. A. PARKER v. LAM SOON CANNERY CO.

[Orig. Civ. Juris. (Knight, J.) October 7, 1952]

[Singapore — Suit No. 604 of 1951]

Contract — Sale of copra F.O.B. Singapore — "Guarantee of 5% loss in weight" at destination — Evidence Ordinance, s. 99.

Under 2 contracts in writing, the plaintiff bought from the defendants 200 and 100 tons respectively of copra F.O.B. Singapore. In the 1st contract under the heading "shipment" appeared the words "April 1949 on 5% guarantee loss of weight". In the 2nd contract under the heading "quality" appeared the words "Straits Fair Merchantable mixed. With guarantee of 5% loss in weight at port of destination". It was agreed that full weight was delivered on board ships at Singapore but at destination it was found that there was a shortage of